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November 5, 2004

Mary L. Cottrell, Secretary  
Department of Telecommunication and Energy  
One South Station, 2<sup>nd</sup> Floor  
Boston, MA 02202

Re: D.T.E. 04-61 — Petition of Boston Edison Company and Commonwealth Electric Company for Approvals Relating to the Termination of Power Purchase Agreements with MASSPOWER

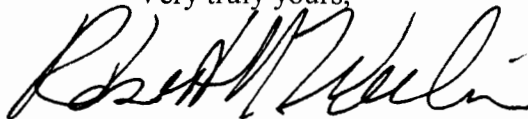
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Dear Secretary Cottrell:

Enclosed for filing is the Reply Brief of Boston Edison Company and Commonwealth Electric Company d/b/a NSTAR Electric in the above-referenced proceeding. Also enclosed is a certificate of service.

Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert N. Werlin", written in a cursive style.

Robert N. Werlin

Enclosures

cc: Joan Foster Evans, Hearing Officer  
Service List

**COMMONWEALTH OF MASSACHUSETTS**

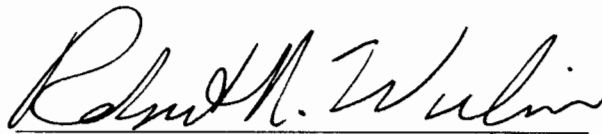
**DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

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Boston Edison Company )  
Commonwealth Electric Company )  
\_\_\_\_\_ )

D.T.E. 04-61

**CERTIFICATE OF SERVICE**

I certify that I have this day served the foregoing document upon the Department of Telecommunications and parties of record in accordance with the requirements of 220 C.M.R. 1.05 (Department's Rules of Practice and Procedures).



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Boston, Massachusetts 02110  
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Dated: November 5, 2004

**COMMONWEALTH OF MASSACHUSETTS**  
**DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

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Petition of Boston Edison Company and  
Commonwealth Electric Company  
For Approvals Relating to the Renegotiation  
Of Purchase Power Agreements with  
MASSPOWER

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D.T.E. 04-61

**REPLY BRIEF OF BOSTON EDISON COMPANY AND  
COMMONWEALTH ELECTRIC COMPANY**

Submitted by:

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Dated: November 5, 2004

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**COMMONWEALTH OF MASSACHUSETTS**

**DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

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Petition of Boston Edison Company and	)	
Commonwealth Electric Company	)	
For Approvals Relating to the Renegotiation	)	D.T.E. 04-61
Of Purchase Power Agreements with	)	
MASSPOWER	)	

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**REPLY BRIEF OF BOSTON EDISON COMPANY AND  
COMMONWEALTH ELECTRIC COMPANY**

**I. INTRODUCTION**

Boston Edison Company (“Boston Edison”) and Commonwealth Electric Company (“Commonwealth”), d/b/a NSTAR Electric (“NSTAR Electric” or the “Companies”) file this reply brief to respond to the initial brief of the Attorney General of the Commonwealth (the “Attorney General”) in the above-referenced proceeding before the Department of Telecommunications and Energy (the “Department”).<sup>1</sup> This case was filed by the Companies, pursuant to G.L. c. 164, §§ 1A, 1G, 76, 94 and 94A, for approval of: (a) the MASSPOWER Termination Agreement, dated June 8, 2004, between NSTAR Electric and MASSPOWER to effect the buyout and termination of Boston Edison’s and Commonwealth’s respective existing Power Purchase Agreements (“PPAs”) with

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<sup>1</sup> In responding to the Attorney General’s initial brief, the Companies will not repeat arguments at length that were addressed in the Companies’ Initial Brief. Silence on any matter raised by the Attorney General does not indicate the Companies’ agreement to any issue raised by the Attorney General. The Companies expressly reassert the positions and arguments set forth in their Initial Brief.

MASSPOWER, and (2) ratemaking treatment associated with the MASSPOWER Termination Agreement (the “Petition”).<sup>2</sup>

Notably, the Attorney General does not seek Department rejection of the Companies’ petition for approval of the MASSPOWER Termination Agreement and associated ratemaking treatment. Nor does the Attorney General dispute any of the evidence, analytical methods or legal standards presented by the Companies. Instead, he argues that the Department should ensure the Companies’ Petition yields “a significant margin” of customer savings, which the Attorney General arbitrarily suggests should be at least 5 percent over the net present value of the expected cash flows required under the contract (Attorney General Initial Brief at 5). Because the Companies’ savings estimates are based, in part, on the issuance of securitized rate reduction bonds with a 4.5 percent interest rate, the Attorney General proposes that the Department “cap” the interest rate on these bonds (presumably at 4.5 percent) in order “to guarantee” that there are significant savings to customers from the buyout of the MASSPOWER PPAs.

The Attorney General’s proposal would impose an artificial and inappropriate barrier that must be overcome before the Companies can obtain the mitigation savings for their customers that are attributable to the MASSPOWER Termination Agreement. Such a barrier to mitigation is inconsistent with the Electric Restructuring Act, Chapter 164 of the Acts of 1997 (the “Act”), which requires that electric companies (including Boston Edison and Commonwealth) make good-faith efforts to renegotiate their above-market PPAs to achieve reductions in the transition charge (i.e., mitigation). G.L. c. 164,

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<sup>2</sup> In a related case, D.T.E. 04-70, the Companies are seeking that the buyout payment be financed and securitized through the issuance of rate reduction bonds pursuant to G.L. c. 164, § 1H.

§ 1G(d)(2)(i). The Companies have conducted the required renegotiation in good faith through an open, transparent and fairly managed auction. The result is the MASSPOWER Termination Agreement, which provides the Companies' customers with approximately \$108 million in projected savings on a net-present-value ("NPV") basis. As described below, the Attorney General's argument misapplies the legal standard and mischaracterizes the record evidence. Accordingly, the Department should reject the Attorney General's proposal and approve the Companies' petition so that these significant customer benefits can be realized.

**II. THE ATTORNEY GENERAL'S REQUEST THAT A MINIMUM OF 5 PERCENT SAVINGS BE ACHIEVED BEFORE APPROVING THE MASSPOWER TERMINATION AGREEMENT IS NEITHER REASONABLE NOR CONSISTENT WITH THE REQUIREMENTS OF THE ACT.**

The Attorney General argues that, if the Department approves the Companies' Petition, the Department should ensure that there is a "significant margin of savings" for customers (Attorney General Initial Brief at 5). According to the Attorney General, because of the uncertainties associated with forecasted energy costs and interest rates applicable to the securitization of the buyout amount, the Department should "cap" the proposed securitized bond interest issuance rate at 4.50 percent (*id.* at 6). He argues that, by capping the interest rate, the Department would allow a "reasonable minimum savings percentage" of 5 percent over the NPV of the expected cash flows required under the MASSPOWER Termination Agreement (*id.* at 6). The Attorney General's proposed cap and artificial savings threshold requirement would establish an unreasonable, improper and artificial barrier to achieving the maximum mitigation savings that are otherwise required and consistent with the Act and the Companies' Restructuring Settlement and

Restructuring Plan. There is neither a statutory nor any other legal basis to impose such a requirement, and the Department should reject the Attorney General's proposal.

The Attorney General correctly recognizes that “[t]he Department is authorized to approve the recovery of costs associated with a contract restructuring if the buyout is likely to achieve customer savings and is otherwise in the public interest” (Attorney General Initial Brief at 4, citing G.L. c. 164, § 1G(b)(1)(iv)). In fact, the Act requires Department approval where a proposed buyout is likely to achieve customer savings and is otherwise in the public interest.

Upon a finding by the [D]epartment that a negotiated contract buyout or other modification to the terms and conditions of such contracts is *likely to achieve savings to the ratepayers* and is otherwise in the public interest, the remaining amounts in excess of market value associated with such contract *shall be included in the transition charges*, which are authorized to be assessed pursuant to said subsection (e) and upon commencement of mitigation efforts as required herein.

G.L. c. 164, § 1G(d)(2)(ii) (emphasis added). The Attorney General points to no statutory provision or precedent that would establish a minimum level of savings to customers.<sup>3</sup>

The logic of the Attorney General's argument would lead to the conclusion that the Companies should reject a proposal that is projected to generate 4.9 percent savings (which could be millions of dollars of customer savings), even where customers benefit and the Companies would have fulfilled their mitigation and divestiture obligations under

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<sup>3</sup> It is possible that even the results of a well-run, competitive auction will not provide customer saving. NSTAR Electric's 1999-2000 is a case in point. In that auction, although the Companies received eight bids that included some or all of the MASSPOWER contracts, the analysis showed that most bidders required a significant premium over the estimated market value of the PPAs, and there were no customer savings (Exh. NSTAR-GOL at 9; see also Exh. AG-1-5 **CONFIDENTIAL**). NSTAR Electric did not propose that it go forward with bids that would provide “negative” savings.



the Act, the Restructuring Settlement and the Restructuring Plan. This argument has no basis in law and would violate the requirement that transition costs paid by customers be mitigated.

The Attorney General is also wrong on the facts. He misleadingly argues that “a 25 percent increase in the energy cost eliminates the savings in CEA’s analysis” (Attorney General Initial Brief at 5-6, citing RR-DTE-3 (emphasis added)). But CEA’s analysis “was used as a ‘screening tool’...” for evaluating proposals (Exh. AG-3-4 [D.T.E. 04-60]; see also Tr. 1, at 89-90, 101 [D.T.E. 04-60]) and does not attempt to quantify customer savings. Customer savings is measured by the reduction in transition cost revenues projected to be paid by customers as set forth in Mr. Lubbock’s exhibits (Company Initial Brief at 11-13). NSTAR Electric [Pittsfield], D.T.E. 04-60, at 25-26 (2004). The record demonstrates that:

Savings from the MASSPOWER Termination Agreement are so substantial that fuel and energy prices would have to increase by approximately 76.4 percent in order for the proposed transaction to result in zero savings (including the savings resulting from the securitization of the lump-sum payment) (RR-DTE-3, Att. DTE-3(b) **CONFIDENTIAL**).

Company Initial Brief at 13, n.8. Thus, although there is no legal threshold regarding the amount of customer savings that is required, this record establishes that the projected customer savings are substantial (\$108 million) and would persist over very extreme changes in assumptions.

Finally, the Attorney General proposes that the Department establish a cap on the interest rate for the rate reduction bonds in order to ensure that that the customer savings materialize (Attorney General Initial Brief at 6). The proposed securitization bond approval is currently being reviewed before the Department in a separate, though related proceeding, D.T.E. 04-70. The Companies agree that the projection of customer savings

is, in part, dependent on the assumed interest rate for the rate reduction bonds, but Attorney General's request that the interest rate on the rate reduction bonds be "capped" at 4.5 percent is not necessary or appropriate in this case. This issue is more properly addressed in D.T.E. 04-70, where the details of the financing transaction, including interest rates, can be raised. It should be noted, however, that if financial markets required a higher interest rate than presently assumed, it would be appropriate to issue rate reduction bonds, so long as customer savings would still occur. In any case, the Department should defer consideration of this request at this time.

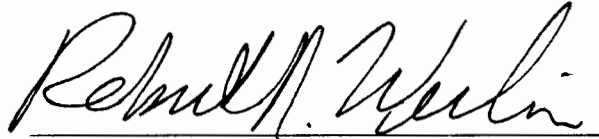
### **III. CONCLUSION**

The Attorney General would have the Department impose an arbitrary threshold for mitigation savings required before the Department would approve the MASSPOWER Termination Agreement and associated ratemaking treatment, depriving Boston Edison's and Commonwealth's customers of the savings associated with the maximum mitigation of the existing PPAs. His proposal for a minimum level of savings has no basis in fact or law and should be rejected by the Department. For the reasons set forth herein and in the Companies' Initial Brief, the Department should approve the Companies' Petition.

Respectfully submitted,

**BOSTON EDISON COMPANY AND  
COMMONWEALTH ELECTRIC COMPANY**

By Their Attorneys,

A handwritten signature in black ink, appearing to read "Robert N. Werlin", written over a horizontal line.

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